

## **EXHIBIT 5**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Adv.Pro.No.  
08-01789(BRL)

Debtor.

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IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Plaintiff,

Adv.Pro.No.  
09-1182(BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION of FRED SLOAN,  
as taken by and before NANCY C. BENDISH, Certified  
Court Reporter, RMR, CRR and Notary Public of the  
States of New York and New Jersey, at the offices of  
BAKER & HOSTETLER, 45 Rockefeller Plaza, New York,  
New York on Tuesday, October 16, 2012, commencing at  
10:03 a.m.

1 Q. Okay. And what were some of the  
2 factors that made people concerned about Mr. Madoff  
3 at Ivy?

4 MR. CHOE: Object to form.

5 MS. PRINC: Object to form.

6 A. So, not with respect to this?

7 Q. Right. Just generally.

8 MR. CHOE: Object to form.

9 A. I can tell you some of the concerns  
10 that I think I had along the way. I'm not sure who  
11 else at Ivy thought what when, but I can list some  
12 concerns that I think I had.

13 One is that he didn't tell us the  
14 amount of capital he had under management. Another  
15 is that he was self-clearing.

16 Q. Can you explain what that means.

17 A. Meant that unlike most of the hedge  
18 funds we dealt with, the assets were held within the  
19 same firm.

20 I think another concern would be that  
21 Madoff didn't fully explain how he was able to trade  
22 as well as he did. So, those are the concerns that  
23 come to mind.

24 Q. Were you concerned about trades  
25 outside the range, the daily range?

1 going to ask you this.

2 Last paragraph on that page, it talks  
3 about the feeder funds, Fairfield Sentry and  
4 Kingate. "Madoff-only feeders reputed to be \$7  
5 billion each."

6 Is that something that you observed  
7 when you reviewed Madoff?

8 MR. CHOE: Object to form.

9 MS. PRINC: Object to form.

10 A. I don't recall knowing the capital of  
11 any of these funds.

12 Q. Did you speculate as to how much  
13 assets Madoff had under management?

14 MR. CHOE: Object to form.

15 MS. PRINC: Object to form.

16 Q. While you were at Ivy?

17 MR. CHOE: Object to form.

18 A. I don't remember, but probably.

19 Q. Was that a source of concern at all,  
20 the amount of assets he had under management?

21 MS. PRINC: Object to form.

22 MR. CHOE: Object to form.

23 A. I think as we talked about earlier, I  
24 had a question as to why Madoff didn't tell us the  
25 amount of capital he had under management.

1 MS. PRINC: Object to form.

2 MR. CHOE: Object to form.

3 A. No, I don't think it would be because  
4 this is some seven years later.

5 Q. On the next page your email to Peter,  
6 second from the bottom states --

7 A. Yes.

8 Q. -- "There is no prime broker."  
9 That's something you knew all along, correct?

10 MS. PRINC: Object to form.

11 MR. CHOE: Object to form.

12 A. Yes, that's correct. There was no  
13 prime broker.

14 Q. Did that make you uneasy about  
15 Madoff?

16 MS. PRINC: Object to form.

17 MR. CHOE: Object to form.

18 A. I think as I listed earlier, that was  
19 one of the questions that I had about Madoff.

20 Q. Peter responds, "I am sure that  
21 wouldn't pass your DD." That's due diligence,  
22 correct?

23 A. Yes.

24 Q. And you respond "correct."

25 Does that mean that if you were

1 anybody who was invested there, meaning Madoff, that  
2 they should get out?

3 A. That certainly was my state of mind  
4 at the time I wrote this.

5 Q. Did you -- and did you ever tell  
6 Mr. Merkin that his funds should get out?

7 A. I don't believe so.

8 MS. PRINC: No further questions.  
9 Thank you.

10 MR. LAFHEY: I have no questions,  
11 reserve all rights.

12 MR. NEWCOMB: I have no questions.

13 MR. COLUMBO: Concluded, thank you.

14 THE VIDEOGRAPHER: We are going off  
15 the record, the time is 4:25. This ends tape 4.

16 (Deposition concluded.)

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